

look forward to their input and their criticism—constructive, we hope—to make this legislation even better.

I would again say to our staffs who worked so hard to get us to this point a very special thank you.

To our colleagues on both sides of the aisle, we look forward to working with you to make what we think is a good bill even better. I like to say that everything I do, I know I can do better. If it isn't perfect, make it better. And my last thought on this is that the road to improvement is always under construction.

So we have some more work to do, and we will take what is a good bipartisan bill and hopefully make it a lot better.

Madam President, with that, I will say good night to you. I look forward to seeing you in about 5 or 6 weeks. My best to you and the people you so ably represent in New Hampshire. God bless.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THANKING STAFF

Mr. REID. Madam President, I appreciate the Presiding Officer's patience in waiting for us to wrap up things.

Let me say a word very quickly about the staff. I wish everyone a good August. It has been an extremely difficult first 7 months of this congressional period. We got a lot done, and I appreciate very much all the hard work of everyone.

I have said before, but not recently, that we get a lot of things done around here—not nearly as much as we should—but it is the result of all the work that is done by those here and the scores of other people we don't see that are back there doing all kinds of things to make this place work, all the committee staff, the police officers but especially the floor staff.

As we talked earlier today about some departures we have here, one of the good things we have is that in all the time I have been here, as far as I am aware—there could have been instances, but I am unaware of any, where there was bitterness expressed publicly and, as far as I know, privately between each other. I haven't seen that. I appreciate very much the good work we do for the Senate. The staff is not partisan in the work for their bosses that they try to get done, and we can only do that through them.

I am so grateful for all they do for the Senate leadership, all the Senators, and the country. Words are not adequate for me to express that, but I truly do appreciate all they do.

UNANIMOUS CONSENT AGREEMENT—S.1392

Mr. REID. Madam President, I ask unanimous consent that at 11 a.m. on Tuesday, September, 10, 2013, the motion to proceed to S. 1392 be agreed to and the Senate proceed to consideration of the legislation.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators allowed to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTERCHANGE FEE RULEMAKING

Mr. DURBIN. Madam President, I rise to speak about a Federal court ruling handed down yesterday that represents a tremendous victory for consumers and Main Street businesses across America.

This ruling has to do with debit card swipe fees. Yesterday, a Federal judge in D.C. called for the Federal Reserve to lower the approximately 24 cent cap it set on debit swipe fees to a level that more closely reflects the actual cost of a debit transaction.

This decision is a major win for Main Street merchants and their customers.

It was urgently needed, because this decision corrects flaws in the Fed's rulemaking that had allowed Visa and MasterCard to triple the swipe fees they impose on many coffeeshops, convenience stores, restaurants and other merchants.

I had filed an amicus brief in this court case, since the case involved a rulemaking based on a law that I had authored. I am very pleased that the court ruled the way it did, and I will take a minute to explain why.

For years, I have been sounding the alarm about swipe fees, also known as interchange fees.

The swipe fee is a hidden fee that is charged on every debit or credit card transaction. It is a fee that a merchant has to pay to a bank when the merchant accepts a credit or debit card that the bank issued. The fee is taken as a cut out of the transaction amount.

These swipe fees are harmful to consumers and to our economy. They are hidden, they are anti-competitive, and they end up raising the price of everything we buy at retail.

It is important to understand how these fees work.

The vast majority of bank fees are set in a transparent and competitive market environment, with each bank setting its own fee rate and competing over them. But that is not the case with swipe fees.

With swipe fees, the big banks decided they would designate the two

giant card companies, Visa and MasterCard, to set fees for all of them. That way each bank could get the same high fee on a card transaction without having to worry about competition.

Swipe fees have no transparency. Most customers and most merchants have no idea what kind of swipe fee is being charged when they use a debit or credit card.

The swipe fee system became an enormous money-maker for Visa, MasterCard and the banks. They were collecting an estimated \$16 billion in debit swipe fees and \$30 billion in credit fees each year.

Those billions are paid by every merchant, charity, school, and government agency that accepts payment by card—and the costs are passed on to American consumers in the form of higher prices.

By 2010, the U.S. swipe fee system was growing out of control with no end in sight. U.S. swipe fee rates had become the highest in the world—far exceeding the actual costs of conducting a debit or credit transaction.

There were no market forces serving to keep fees at a reasonable level. There was no competition and no choice. Merchants and their customers were being forced to subsidize billions in windfall fees to the big banks.

I knew we had to change this situation.

This is an issue of fundamental importance to our economy. Our nation is moving from a currency based on paper cash and checks to a system where American dollars are mostly exchanged through electronic transactions.

We cannot allow Visa, MasterCard and the big banks to dominate the electronic payments system and use it to enrich themselves at consumers' expense. Remember, this is America's currency we are talking about. We have to ensure transparency, competition and fairness when it comes to electronic payments involving U.S. dollars.

So I stepped in and introduced an amendment to the 2010 Wall Street Reform bill that for the first time placed reasonable regulation over debit swipe fees.

My amendment said that if the Nation's biggest banks are going to let Visa and MasterCard fix swipe fee rates for them, then the rates must be reasonable and proportional to the cost of processing a transaction. No more unreasonably high debit swipe fees for big banks.

My amendment passed the Senate with 64 votes and it was signed into law with the rest of Wall Street reform.

The swipe fee reform law that I wrote directed the Federal Reserve to issue regulations to bring down debit swipe fee rates.

In December 2010, the Fed issued a proposed rulemaking that called for debit swipe fees to be capped at 7 to 12 cents per transaction.

This was a significant reduction from what had been a 44 cent average debit swipe fee, though it still allowed banks

to easily cover their debit transaction costs, which the Fed pegged at just a few cents.

However, after the Fed issued the draft rule, the big banks and card network giants turned their lobbyists loose on them. It was a lobbying stampede.

They pressured the Fed to raise the debit swipe fee cap to a level far higher than 12 cents, because they claimed that there were all sorts of additional costs that the Fed forgot to include in its analysis.

The Fed gave in, and in June 2011 issued a final rule that raised the cap level to about 24 cents—much higher than the actual cost of a debit transaction.

Predictably, Visa, MasterCard and the big banks took advantage of this watered-down regulation that they had lobbied for. Visa and MasterCard promptly jacked up any swipe fee rates that were below 24 cents so that this 24 cent ceiling became a floor.

With Visa and MasterCard's rate increases, stores that mainly handle small dollar purchases like coffeeshops, convenience stores, and fast food restaurants are now paying far more in swipe fees than they did before.

These merchants used to be charged debit fees that were a percentage of the purchase amount, and now they are charged around 24 cents no matter how small the purchase. Their customers ultimately pay the price.

This was not a flaw in the law, which required a "reasonable and proportional" fee. Instead, it showed the danger of watering down the regulations that implement these laws. The banks and card companies lobbied the Fed for a loophole and when they got one, they ran through it.

After the Fed issued its final rule and Visa and MasterCard promptly raised their swipe fee rates to the cap level wherever they could, a coalition of merchants led by the convenience stores filed a lawsuit in federal court.

They argued that the Fed failed to follow the law in issuing its final regulation. They urged the court to order the Fed to rewrite its regulation in compliance with the statute.

I filed an amicus brief in this case in support of the merchants' position. In my brief, I pointed out that when the Fed doubled its swipe fee cap between the initial rulemaking and the final rulemaking, the Fed cited the need to cover certain costs that the statute explicitly prohibited the Fed from including.

The bottom line, I argued, was that the Fed came far closer to following the statute in its draft rulemaking than after it had bent toward the banks in its final rulemaking.

The court agreed, and yesterday it ordered the Fed to rewrite its rules in compliance with what the law provides.

Here's a key quote from the court's opinion: "The court concludes that the Board has clearly disregarded Congress's statutory intent by inappro-

priately inflating all debit card transaction fees by billions of dollars."

The court also pointed out the problem with Visa and MasterCard's swipe fee increases on small dollar transactions. The Court said:

By including in the interchange fee standard costs that are expressly prohibited by the statute, the final regulation represents a significant price increase over pre-Durbin Amendment rates for small-ticket debit transactions under the \$12 threshold. Congress did not empower the Board to make policy judgments that would result in significantly higher interchange rates.

The court concluded that the Fed must rewrite its regulation to lower the debit fee cap and to halt Visa and MasterCard's fee increases on merchants for small dollar transactions.

Now, this process of rewriting the regulations will take some time, and I suspect there may be more litigation before this issue is over.

But this court ruling marks a tremendous win for Main Street merchants and their customers who deserve the swipe fee relief that the law provided for.

Fortunately for the Fed, there are some clear roadmaps for how it can fix its regulation. I pointed out in my amicus brief that the Fed's initial rulemaking, with its 7 to 12 cent cap, came far closer to reflecting the actual costs that Congress instructed the Fed to look at.

The Fed should look again to its initial rulemaking as it works to rewrite its final rule.

And just last week, the European Commission announced that it would seek to cap debit swipe fee rates throughout the European Union at 0.2 percent of the transaction.

Given that the average debit transaction is about \$38, that works out to an average cap of about 7 cents—right where the Fed was in its initial rule.

Congressman PETER WELCH and I sent a letter last week urging the Fed to closely review the European Commission's debit fee cap and to incorporate it in the Fed's debit fee regulation. I believe the Fed will find the Commission's analysis and conclusions to be very helpful in rewriting its final rule.

As we move forward on the path of reasonable swipe fee reform, I should note that Visa, MasterCard and the banking industry are probably not too pleased with this court decision.

I suspect they will be up here on Capitol Hill very soon, screaming bloody murder and arguing that this court decision means the end of the world.

I just want to point out that the banks and card companies have been spreading myths and using scare tactics about swipe fee reform for years. None of them have come true.

They argued that swipe fee reform would devastate small banks. Yet separate studies by the Fed, GAO and the FTC have all found that the exemption I wrote in the law for small banks has worked as intended.

As it turns out, small banks and credit unions have thrived since this

law took effect. Why? Because under my amendment, small banks and credit unions can continue to receive the same high interchange rates from Visa and MasterCard they got before far higher than the rates that their big bank competitors now receive.

Also, the big banks argued that they would have to jack up fees on consumers to make up for the lost revenue from swipe fees.

But we haven't seen that happen either, because there is transparency and competition when it comes to bank fees on consumers. In fact, we've gotten more transparency on these fees in the past few years as many banks have adopted a fee disclosure form developed by the Pew Charitable Trusts that I have strongly supported.

As the banks' other scare tactics have faded away, they have resorted to arguing that the problem with swipe reform is that merchants haven't passed along enough swipe fee savings to consumers.

This was a pretty hypocritical argument for them to make, because they knew that Visa and MasterCard had raised many swipe fee rates after reform took effect—a direct result of the higher cap that they had lobbied for.

But even though many merchants have suffered under those swipe fee increases, we have still seen aggressive price competition and discounting by retailers since swipe fee reform took effect. Consumers have benefitted from this price competition, and they will benefit even more from this court ruling.

In closing, I note that yesterday's court decision marks another important step in the effort to make sure the electronic payments system is reasonable and fair for American consumers and businesses. Our work is not over yet, but we are making great progress.

I want to thank my colleagues and all the consumers, merchants and advocates across America who have joined me in this effort. This marks a big win for Main Street over Wall Street, and it wouldn't have been possible without this excellent coalition.

TRIBUTE TO GLENN POSHARD

Mr. DURBIN. Madam President, I would like to thank Dr. Glenn Poshard for all he has done for Southern Illinois University and for his 40 years of public service to Illinois.

After more than 7 years as president of Southern Illinois University, Dr. Poshard will be retiring next year. Under Dr. Poshard's leadership, Southern Illinois University has been able to keep tuition costs low and the university's finances sound, despite the financial problems that have plagued the State.

Throughout his career, Dr. Poshard worked for the people of southern Illinois. He was born in Herald, IL, and graduated from Carmi Township High School. He left Illinois to serve his country in the U.S. Army in Korea,